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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA
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7 NAIM R. COSTANDI,

Case No. 2:17-02019-JCM-PAL

8 Plaintiff,

9 v.

SCREENING ORDER

10 NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

(Am. Compl. – ECF No. 4)

11 Defendant.
12

13 This matter involves Plaintiff Naim R. Costandi’s appeal and request for judicial review of
14 the Acting Commissioner of Social Security, Defendant Nancy A. Berryhill’s final decision
15 denying his claim for disability insurance benefits under Title II of the Social Security Act (the
16 “Act”), 42 U.S.C. §§ 401–33. Mr. Costandi has submitted an Amended Complaint (ECF No. 4)
17 in accordance with the court’s Screening Order (ECF No. 2) dismissing the original complaint
18 with leave to amend. The Amended Complaint is referred to the undersigned for re-screening
19 pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local Rules of Practice.

20 After granting a request to proceed *in forma pauperis*, a federal court must additionally
21 screen the complaint and any amended complaints filed prior to a responsive pleading. *Lopez v.*
22 *Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (§ 1915(e) “applies to all *in forma pauperis*
23 complaints”). The simplified pleading standard set forth in Rule 8(a) of the Federal Rules of Civil
24 Procedure applies to all civil actions, with limited exceptions. *Alvarez v. Hill*, 518 F.3d 1152, 1159
25 (9th Cir. 2008). For purposes of 28 U.S.C. § 1915’s screening requirement, a properly pled
26 complaint must therefore provide “a short and plain statement of the claim showing that the pleader
27 is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see also Bell Atlantic Corp. v. Twombly*, 550 U.S.
28 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it demands “more

1 than labels and conclusions” or a “formulaic recitation of the elements of a cause of action.”
2 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

3 Here, Mr. Constandi challenges a decision by the Social Security Administration (“SSA”)
4 denying his disability insurance benefits of the Act. *See* Am. Compl. (ECF No. 4) ¶ 3. To state a
5 valid benefits claim, a complaint must give the defendant fair notice of what the plaintiff’s claim
6 is and the grounds upon which it rests. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011) (noting
7 that a complaint “must contain sufficient allegations of underlying facts to give fair notice and to
8 enable the opposing party to defend itself effectively”). Although this showing need not be made
9 in great detail, it must be presented in sufficient detail for the court to understand the disputed
10 issues so that it can meaningfully screen the complaint. *See* 4 Soc. Sec. Law & Prac. § 56:4 (2015).

11 The Amended Complaint seeks judicial review of the Commissioner’s decision denying
12 benefits and asks the court to reverse that decision, or alternatively, to remand this matter for a
13 new hearing. A district court can affirm, modify, reverse, or remand a decision if a plaintiff has
14 exhausted his administrative remedies and timely filed a civil action. However, judicial review of
15 the Commissioner’s decision to deny benefits is limited to determining: (a) whether there is
16 substantial evidence in the record as a whole to support the findings of the Commissioner; and (b)
17 whether the correct legal standards were applied. *Morgan v. Comm’r Soc. Sec. Admin.*, 169 F.3d
18 595, 599 (9th Cir. 1999).

19 Upon review of the original complaint, the court determined that Mr. Constandi failed to
20 state a claim upon which relief can be granted. *See* Screening Order (ECF No. 2). He did not state
21 the nature of the disability or allege when it commenced. *Id.* Additionally, Constandi merely
22 alleged that the Commissioner’s decision to deny benefits was wrong but failed to indicate *why*
23 the decision was wrong. *Id.* The court found that a complaint merely stating that the decision was
24 wrong but failing to describe the underlying reasons was insufficient to satisfy Rule 8’s pleading
25 requirement. *Id.* (citing *Starr*, 652 F.3d at 1216).

26 The Amended Complaint alleges that Mr. Constandi has been disabled since March 1,
27 2014, through the decision date of January 13, 2017. *See* Am. Compl. (ECF No. 4) ¶ 5. The
28 Administrative Law Judge (“ALJ”) found Constandi to have the severe impairment of ischemic

1 heart disease. *Id.* ¶ 9(a). Despite his severe impairment, the ALJ found Constandi
2 to have the residual functional capacity for medium work except he can lift 50
3 pounds occasionally and 25 pounds frequently he can stand for six hours out of an
4 eight-hour workday; he can sit for six hours out of an eight-hour workday; he can
occasionally climb ladders, ropes, or scaffold or crawl; he can frequently stoop,
kneel, crouch, and climb ramps and stairs; and he must avoid concentrated exposure
to extreme temperatures and hazards.

5 *Id.* ¶ 9(b). The ALJ further determined that Constandi could perform his past relevant work. *Id.*
6 ¶ 9(c). Mr. Constandi alleges that the ALJ's decision lacks the support of substantial evidence in
7 that the ALJ erred by improperly rejecting a consultative examiner's opinion, which precluded
8 past relevant work and warranted a disability finding. *Id.* ¶ 9(d). The Amended Complaint
9 contains sufficient allegations of underlying facts to give the Defendant fair notice of Mr.
10 Constandi's disagreement with the SSA's final determination. The court therefore finds that his
11 Amended Complaint states a claim for initial screening purposes.

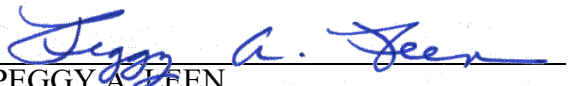
12 Accordingly,

13 **IT IS ORDERED:**

- 14 1. The Clerk of Court shall issue summons to the United States Attorney for the District
15 of Nevada and deliver the summons and Amended Complaint (ECF No. 4) to the U.S.
16 Marshal for service.
- 17 2. The Clerk of the Court shall also issue summons to the Commissioner of the Social
18 Security Administration and Attorney General of the United States.
- 19 3. Mr. Constandi shall serve the Commissioner of the Social Security Administration by
20 sending a copy of the summons and Amended Complaint by certified mail to: (1) Office
21 of Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear St.,
22 Suite 899, San Francisco, California 94105-1545; and (2) the Attorney General of the
23 United States, Department of Justice, 950 Pennsylvania Avenue, N.W., Room 4400,
24 Washington, D.C. 20530.
- 25 4. Following the Defendant's filing of an answer, the court will issue a scheduling order
26 setting a briefing schedule.
- 27 5. From this point forward, Mr. Constandi shall serve upon Defendant or, if appearance
28 has been entered by counsel, upon the attorney, a copy of every pleading, motion, or

1 other document filed with the Clerk of the Court pursuant to LR IC 1-1 and 4-1 of the
2 Local Rules of Practice. In accordance with LR IC 4-1(d), the parties shall include
3 with each filing a certificate of service stating that a true and correct copy of the
4 document was served on an opposing party or counsel for an opposing party and
5 indicating how service was accomplished. The court may disregard any paper received
6 by a district judge or magistrate judge that has not been filed with the Clerk of the
7 Court, and any paper received by a district judge, magistrate judge, or the Clerk of the
8 Court that fails to include a certificate of service.

9 Dated this 3rd day of January, 2018.

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11 PEGGY ALLEN
12 UNITED STATES MAGISTRATE JUDGE
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